

Date of decision: 22-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(22-7-1996)

Mr. Y. V. Shah for the petitioner  
None present for respondent No.1  
Mr. N. N. Pandya for respondents No.2 and 3.

ORAL JUDGMENT:

Heard the learned counsel for the parties. Having gone through the order of the Tribunal constituted under the

Gujarat Secondary Education Act, 1972 and having considered the contention raised by the learned counsel for the petitioner, I do not find any error apparent on the face of the order of the Tribunal which calls for interference by this Court. The Tribunal passed just and reasonable order, and it does not call for interference by this court sitting under Article 227 of the Constitution of India.

2. The counsel for the petitioner contended that the Tribunal had no jurisdiction to entertain the application filed by the teacher. The counsel for the petitioner is unable to substantiate this contention as to how the Tribunal was lacking jurisdiction in the matter. Apart from this, from the judgment of the Tribunal I do not find any such contention having been raised by the petitioner before it. The petitioner has submitted to the jurisdiction of the Tribunal and it is unfair on its part to challenge the decision of the Tribunal on this point. Apart from this, this is a matter where a teacher was declared to be entitled to receive his salary for a period from 30th June 1981 to 22nd April, 1982. The counsel for the petitioner is unable to satisfy this court regarding non-entitlement of the teacher to the salary for the aforesaid period. Learned counsel for the petitioner contended that the State Government should have been directed to pay the salary and not the management. This contention is also devoid of any merit. The management is the employer of the teacher and it is its responsibility first to discharge its obligation to pay salary to the teacher. The Tribunal has taken care to direct the District Education Officer, Baroda to pay the amount of salary to the teacher out of the maintenance grant which the school would be entitled to receive from the Government, only in case the management failed to pay the amount of salary.

3. It is really shocking that the petitioner has challenged such a reasonable order passed by the Tribunal. Interim relief has been granted by this Court and as such the teacher could not get the amount of salary for the aforesaid period for all these years. This writ petition is without any substance. The teacher has been deprived of the amount of salary for all these years as interim relief was granted by this Court. This court cannot be oblivious of the fact that for all these years a teacher has been put to suffer loss of interest on the amount of salary which was required to be paid to him as directed by the Tribunal under the impugned order. Therefore he has to be compensated for the loss for which he was not at any fault. The interest of justice would be met in case the petitioner is directed to pay interest on the amount of salary ordered by the Tribunal to be paid to the teacher concerned at the rate of 12% per

annum from 10-2-1984. It is further ordered that in case the amount of salary together with interest as aforesaid is not paid to the teacher within a period of two months from today, the teacher shall be entitled to interest on the entire amount at the rate of 18% from the date of this judgment. It is true that the counsel for the teacher has not put appearance. But the fact remains that the teacher had engaged a counsel for which he would have paid fees and would have incurred incidental and ancillary expenses also. Merely because the counsel engaged by the teacher has not put appearance, the teacher cannot be denied cost of the litigation. The petitioner is directed to pay to respondent No.1, teacher, Rs.1,000/- (Rupees one thousand) by way of cost of this special civil application.

4. In the result the special civil application fails and the same is dismissed, subject to the aforesaid directions. Rule discharged. Interim relief granted earlier stands vacated.